HON'BLE SRI JUSTICE K.G. SHANKAR

WRIT PETITION NO. 15593 OF 2002

ORDER:

The petitioner sought for a writ of Certiorari to set aside the award dated 21.1.1997 in I.D.No. 48 of 1994 on the file of Labour Court I, Hyderabad (the respondent) and order for continuity of service with backwages and attendant benefits.

The petitioner joined the service of the second respondent as a Conductor on 15.11.1991. On 28.10.1992, while the petitioner was working as conductor of bus in Route No. 85 M from Mamidipallki to Charminar, a check was organised at Stage-1. At that time, 99 passengers were found to be travelling in the bus out of whom 92 passengers possessed tickets and 7 passengers did not possess tickets. The petitioner-Conductor however claimed that as many as 130 passengers were travelling in the bus.

After checking, the checking officials found that the petitioner did not follow the 'Ticket Issue and Completion' (TIC) procedure, that the petitioner collected fare from four

passengers but did not issue tickets to them, that the petitioner did not collect fare from three passengers and did not issue tickets to them and that the petitioner did not close the SR. The petitioner offered spot explanation that some of the passengers boarded the bus after the bus crossed Stage No. 2 when the bus was proceeding slowly and that there was no time for him to issue tickets to seven passengers. He also pointed out that the bus was extremely crowded leading to some of the passengers taking advantage of the crowd and failing to offer fare for purchase of tickets. Inter alia, the petitioner denied that he did not issue tickets to four passengers after collecting fare from them but contended that he did not collect any fare from such persons. He consequently, contended that there was no misconduct on his part.

However, a charge sheet was issued against the petitioner on 4.11.1992. Departmental Enquiry was conducted. The petitioner was found guilty in the departmental enquiry. On 22.2.1993, the petitioner was removed from service. The petitioner preferred an appeal to the concerned authority. On 31.8.1993, his appeal was dismissed. The petitioner also preferred a revision, which was also rejected through orders dated 29.7.1994.

Admittedly, the petitioner raised I.D. No. 48 of 1998 before the first respondent. The learned Presiding Officer of the first respondent held that there was no malafides on the part of the petitioner in not issuing tickets. He consequently accepted the explanation of the petitioner. However, the first respondent ordered reinstatement of the petitioner as a fresh candidate. The petitioner questioned the same through the present Writ Petition.

Sri V. Narasimha Goud, learned counsel for the petitioner submitted that the record shows that the checking officials did not verify the bus cash to notice whether the petitioner collected fare from four passengers but failed to issue tickets. He further contended that when the bus with a capacity of 52 to 55 passengers is so crowded carrying about 130 passengers, if any of the passengers did not possess tickets, the Conductor cannot be blamed for the same. He submitted that this is not a case of misappropriation of funds of the corporation by collecting fare but failing to issue tickets and that this is a case where tickets could not be issued by the time the checking had taken place.

It may very well be visualised the circumstances in

which a Conductor could be put to when the bus is extremely crowded and the bus is running within the City. Admittedly, the bus was reaching the last stage. It crossed Stage-2 and was proceeding towards Stage-1. Admittedly, out of 99 passengers, even according to the officials, 92 passengers possessed tickets. According to the petitioner the remaining seven passengers boarded the bus after the bus left Stage-2 and was proceeding towards Stage-1. In such circumstances, I cannot consider that there was any motive on the part of the petitioner to misconduct himself. At the same time, it was the duty of the petitioner to close the SR after the bus crossed the Stage-2 and TIC point but he has not chosen to do so. I, therefore, consider that it is a case where the petitioner is not guilty of the primary charges of carrying passengers without issuing tickets or collecting fare but failed to issue tickets; ancillary charges of violating TIC point route and failure to close the SR however are made out. In that circumstances, the imposition of penalty as a fresh appointment is completely unwarranted as the same is highly disproportionate to the misconduct that the petitioner subjected himself to.

I consider that it would be appropriate to direct that

the petitioner be given continuity of service and attendant benefits and part of the backwages where there was no malpractice on his part.

Consequently, the Writ Petition is allowed. The order of the first respondent is set aside. The petitioner is ordered to be reinstated with continuity of service with all attendant benefits and backwages to an extent of 50%. No costs. Miscellaneous Petitions, pending if any in this Writ Petition, shall also stand closed.

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JUSTICE

K.G.SHANKAR
DATE: 16.09.2013
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